

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

NATURAL RESOURCES  
DEFENSE COUNSEL, INC., et al.,

Plaintiffs, No. CIV S-88-1658 LKK GGH

vs.

KIRK RODGERS, et al.,

Defendants. ORDER

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Previously pending on this court's law and motion calendar for September 16, 2005, was a "mid-course" discovery conference. Also pending was Friant's Ex Parte Application for relief regarding expert data disclosure, filed September 9, 2005. At hearing, the court made the following rulings.

I. Friant's Ex Parte Application For Relief Regarding Expert Data Disclosure

Because Friant had not received all data considered by NRDC's experts, Friant was granted an extension of time to file supplemental expert reports by Friday, September 23, 2005. Friant understood that the extended date was given to *supplement* its reports with NRDC witness information which it had not received prior to the filing of Friant reports.

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1 II. Discovery Schedule

2 A. Limiting number of Non-Retained Experts and Additional Fact Witnesses

3 NRDC was concerned that it would not be able to prepare adequately for trial due  
4 to the number of defendants' proposed witnesses, including Friant's 19 non-retained experts, plus  
5 72 other potential percipient witnesses identified by Friant, and 47 witnesses identified by the  
6 federal defendants as potential percipient witnesses.

7 As a means to winnow down defendants' factual and hybrid witness lists, the  
8 court ordered disclosure of preliminary witness lists. The parties were directed to simultaneously  
9 file and serve an initial disclosure of non-designated expert witnesses by September 23, 2005.  
10 Supplemental simultaneous disclosures are to be filed and served by September 30, 2005.

11 The parties have now filed updated witness lists which indicate a significant  
12 paring down of the number of witnesses. In addition, Friant has further indicated that it has  
13 withdrawn several hybrid (percipient and Rule 26) experts.

14 B. Non-Retained Expert Witness Reports

15 In the initial scheduling order, the court defines at some length the difference  
16 between percipient experts, and Rule 26 experts who could be both percipient and Rule 26  
17 designated-for-trial experts. The difference between the two was explained as percipient experts  
18 could testify to historical opinions that were disseminated in the past while Rule 26 experts are  
19 persons who formulate opinions for the purposes of the litigation. Of course, it is possible that  
20 one person could be both. The court was not in a position at hearing to determine the precise  
21 status of each person listed. Rather, if a percipient expert attempts to give a present opinion, and  
22 no report was filed for that witness, Judge Karlton will assess what, if any, ramifications will  
23 flow from the violation of Rule 26(a)(2)(B).

24 C. Duration of Depositions

25 After the parties meet and confer, plaintiffs agreed to produce their experts for  
26 deposition for one seven hour day for each set of defendants, for a total of two days. If any party

1 seeks relief from the seven hour each limit, the undersigned will be available by telephone during  
2 the deposition time period.

**D. Numbering of Deposition Exhibits**

4 The parties agreed to use a block system of numbering so that each witness will be  
5 designated a sequential block of numbers to be used by all parties in connection with that  
6 witness. Of course, exhibits utilized in previous depositions need not be renumbered. The  
7 purpose of this numbering system is to not have the same exhibit identified by numerous exhibit  
8 numbers.

#### E. Production of Documents at Depositions

10 All parties agreed to a shortened time of 15 days for noticing a deposition that  
11 includes a request for production of documents.

#### F. Setting Dates of Depositions

13 The parties were ordered to meet and confer the week of September 26, 2005, if  
14 not sooner, to set dates for depositions.

G. Production of Documents For Which Claim of Privilege Withdrawn by Friant

16                   Unless otherwise specified in the prior order, and except as referenced in Friant's  
17 September 27, 2005 Request for Clarification (which will be the subject of a separate order), all  
18 non-privileged documents shall be produced by Friant forthwith.

#### H. Extension of Discovery Cutoff Regarding Deposition Matters

20 Discovery cutoff for deposition issues shall be extended to December 12, 2005.  
21 No other motion dates are extended.

Accordingly, IT IS SO ORDERED.

23 || DATED: 9/28/05

/s/ Gregory G. Hollows

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**GREGORY G. HOLLOWSS  
UNITED STATES MAGISTRATE JUDGE**